

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

KAREEM J. HOWELL,

Plaintiff,

v.

E. JOHNSON, et al.,

Defendants.

No. 2:20-CV-0095-DMC-P

**ORDER**

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is plaintiff's complaint (ECF No. 1).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
2 with at least some degree of particularity overt acts by specific defendants which support the  
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
4 impossible for the Court to conduct the screening required by law when the allegations are vague  
5 and conclusory.

## 6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 Plaintiff names six defendants employed at California State Prison, Sacramento in  
9 the complaint: (1) E. Johnson, Staff Psychologist; (2) J. Johnson, Correctional Sergeant; (3) S.  
10 Williamson, Correctional Lieutenant; (4) J. Lynch, Warden; (5) Parham, Correctional Sergeant;  
11 and (6) T. Nyuien, Correctional Officer.

12 In March 2019, plaintiff took legal action and filed a staff complaint against  
13 defendant J. Johnson apparently alleging defendant J. Johnson assaulted plaintiff. See ECF No. 1  
14 at 6. On December 19, 2019, plaintiff filed another staff complaint against defendant J. Johnson  
15 that appears to be related to the assault allegation, but plaintiff is not explicit. See id. On January  
16 1, 2020, defendant Williamson threatened to create problems for plaintiff unless plaintiff dropped  
17 the December 19 complaint against defendant J. Johnson, violating plaintiff's First Amendment  
18 rights. See id. at 7-8. On January 2, 2020, defendant E. Johnson, plaintiff's primary psychologist  
19 and wife to defendant J. Johnson, also asked defendant to drop the December 19 complaint  
20 against defendant J. Johnson. See id. Plaintiff alleges upon refusing to drop his complaint,  
21 defendant E. Johnson falsely accused plaintiff of exposing his genitalia to defendant E. Johnson,  
22 violating plaintiff's First Amendment rights. See id. at 11.

23 Before plaintiff learned of the allegations against him, two correctional officers,  
24 including defendant Nyuien, began taping plaintiff's cell windows with yellow paper allegedly  
25 used to identify sex-offender prisoners. See id. at 9-10. Plaintiff alleges defendant Parham  
26 ordered defendant Nyuien and the other unidentified officer to tape the yellow paper. See id. at  
27 10. Plaintiff requested a formal complaint form from defendant Nyuien who responded by saying  
28 defendant Parham told him to tell plaintiff that there are no more complaint forms, violating his

1 First Amendment rights. See id. Plaintiff alleges other prisoners began to threaten him upon  
 2 defendant Nyuien putting the yellow tape on his windows, violating his Eighth Amendment  
 3 rights. See id. Moreover, plaintiff was never made aware of the allegations made against him by  
 4 defendant E. Johnson before having yellow paper on his cell windows, violating his Fourteenth  
 5 Amendment rights.

6 Plaintiff never mentions defendant Lynch in the complaint and does not make any  
 7 reference to his involvement in the alleged violations.

## 8 9 **II. DISCUSSION**

10 Plaintiff alleges sufficient facts to state cognizable claims against defendants E.  
 11 Johnson, Williamson, Parham, and Nyuien for retaliation, violating plaintiff's First Amendment  
 12 rights. Plaintiff states another cognizable First Amendment claim against defendants Parham and  
 13 Nyuien for preventing him from filing a grievance upon request. Plaintiff also states cognizable  
 14 claims against defendants E. Johnson, Parham, and Nyuien for labeling plaintiff as a sex offender,  
 15 violating his Eighth Amendment and Fourteenth Amendment rights. Plaintiff, however, fails to  
 16 allege sufficient facts to support state cognizable claims against defendants J. Johnson and Lynch.

### 17 **A. Causal Link**

18 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual  
 19 connection or link between the actions of the named defendants and the alleged deprivations. See  
 20 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A  
 21 person 'subjects' another to the deprivation of a constitutional right, within the meaning of  
 22 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform  
 23 an act which he is legally required to do that causes the deprivation of which complaint is made."  
 24 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations  
 25 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
 26 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth  
 27 specific facts as to each individual defendant's causal role in the alleged constitutional  
 28 deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

Plaintiff never states a causal connection between any constitutional violations and the conduct of defendants J. Johnson and Lynch. Plaintiff's previous complaints against J. Johnson only serve as the inciting incident for the other defendants to commit the alleged unconstitutional acts. However, defendants E. Johnson, Parham, Williamson, and Nyuien appear to be acting on their own accord, as plaintiff never alleges J. Johnson directed them or had any involvement in their actions. Similarly, plaintiff fails to allege a cognizable claim against defendant Lynch in his capacity as warden, because plaintiff never states a fact to suggest defendant Lynch sanctioned any unconstitutional behavior.

### **B. Supervisor Liability**

Supervisory personnel are generally not liable under § 1983 for the actions of their employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no respondeat superior liability under § 1983). A supervisor is only liable for the constitutional violations of subordinates if the supervisor participated in or directed the violations. See id. The Supreme Court has rejected the notion that a supervisory defendant can be liable based on knowledge and acquiescence in a subordinate's unconstitutional conduct because government officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct and not the conduct of others. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Supervisory personnel who implement a policy so deficient that the policy itself is a repudiation of constitutional rights and the moving force behind a constitutional violation may, however, be liable even where such personnel do not overtly participate in the offensive act. See Redman v. Cnty of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc).

When a defendant holds a supervisory position, the causal link between such defendant and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). "[A] plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the constitution." Iqbal, 662 U.S. at 676.

1 Plaintiff fails to allege a cognizable claim against defendant Lynch because there  
2 are no facts in the complaint to suggest defendant Lynch directed, condoned, or implemented a  
3 policy condoning the violation of plaintiff's constitutional rights. Plaintiff never even mentions  
4 defendant Lynch's name or any institutional policy among the factual allegations. Plaintiff  
5 cannot state a cognizable claim against defendant Lynch based on his supervising capacity as  
6 warden and the actions of his subordinates alone.

### 8 III. CONCLUSION

9 Because it is possible that the deficiencies identified in this order may be cured by  
10 amending the complaint, plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d  
11 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an  
12 amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,  
13 1262 (9th Cir. 1992). Therefore, if plaintiff amends the complaint, the Court cannot refer to the  
14 prior pleading in order to make plaintiff's amended complaint complete. See Local Rule 220. An  
15 amended complaint must be complete in itself without reference to any prior pleading. See id.

16 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
17 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
18 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
19 each named defendant is involved, and must set forth some affirmative link or connection  
20 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
21 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

22 Because the complaint appears to otherwise state cognizable claims, if no amended  
23 complaint is filed within the time allowed therefor, the Court will issue findings and  
24 recommendations that the claims identified herein as defective be dismissed, as well as such  
25 further orders as are necessary for service of process as to the cognizable claims.

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1 Accordingly, IT IS HEREBY ORDERED that plaintiff may file a first amended  
2 complaint within 30 days of the date of service of this order.

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5 Dated: August 10, 2020

A handwritten signature in dark ink, appearing to read 'Dennis M. Cota', written over a horizontal line.

DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE